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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,112	05/02/2001	Victor Pertegaz-Esteban	5536.02	7616

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/11/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,112

Applicant(s)

PERTEGAZ-ESTEBAN, VICTOR

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☒ Claim(s) 4,5,10,16,23 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,6,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to because in Figs. 3, 4A and 4B, some of the reference characters appear to be incorrect. For example, "78" in Fig. 3, "90" in Fig. 4A, "86" in Fig. 4B, and "96" in Fig. 4B are questionable. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:
Brief Descriptions of Figs. 4A and 4B are missing; and
on pages 6 and 7, lines 28 and 26, respectively, "78" presumably should be changed to --79--.

Appropriate correction is required.

Claim Objections

3. Claims 4, 5, 10, 16, 23 and 26 are objected to because of the following informalities:
in claim 4, the recitation "said handle" on lines 6 and 8 of the claim appear to lack proper antecedent basis and presumably refer to the handle assembly;
in claim 5 (Amended), the recitation "machine" on line 1 presumably should be changed to --device--;

in claim 10, the recitation "a seat said" on line 1 of the claim presumably should be changed to --a seat, said--;

in claim 10, the recitation "said handle assembly" on line 10 of the claim presumably should be changed to --said first axis of rotation--;

in claim 16, the recitation "said exercise machine" on line 2 presumably should be changed to --an exercise machine--;

in claim 23, the recitation that a grasping member is rotatably connected to said handle assembly is not clear because a grasping member has been introduced in claim 16, and presumably "a grasping member" on line 2 of the claim should be changed to --said grasping member--; and

in claim 26, the recitation "said exercise machine" on line 2 presumably should be changed to --an exercise machine--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-8, 10-14, 16, 17 and 23-29 are rejected under 35 U.S.C. 102(b) as being anticipated by *Telle* (US Pat. 5,344,374). *Telle* discloses an exercise device having a base 56, a mechanism support 54 and a seat 14, the exercise device comprising: a weight stack 72; at least one arm assembly 36 operably attached to the weight stack; a handle assembly having a

handle member 83, operably attached to the arm assembly; the handle assembly rotating with respect to the arm assembly about a first axis of rotation 39 (see Fig. 9); and the handle assembly pivoting about two different orthogonal directions with respect to the first axis of rotation. The handle 83 pivots about a first pivot axis 96 and a second pivot axis 95 (see annotations in Figs. 8 and 9). There is also a third pivot axis 49' parallel to the first pivot axis 96 (Figs. 11 and 13). The handle assembly comprises a base member 88 and a cylindrical grasping member 83 rotatably connected to the base member, the grasping member rotating about a second rotation axis 49 (see Fig. 9, 10 and 13).

With regard to claims 24 and 25, at least one arm assembly 53 is operably attached to a load 72; a handle base member 52 is rotatably attached to the arm assembly and rotates with respect to the arm assembly about a first axis of rotation 96 (referenced above as the first pivot axis); a grasping member 83 rotatably attached to the handle base member, the grasping member rotating with respect to the handle base member about a second axis of rotation 95 (referenced above as the second pivot axis) orthogonal to the first axis of rotation 96. The handle base member has an asymmetrical shape about the first axis of rotation 96 such that when not in use, the handle base member rotates to an upright position. A pushing motion is merely an intended use of the machine and the exercise machine of *Telle* is fully capable of being used wherein the primary movement is a pushing motion to actuate the load.

With regard to claims 26-29, a handle member 48 has a base 52, the handle member rotatably connected to the arm assembly 53 about a first axis of rotation 96 (referenced above as the first pivot axis); and wherein a first, heavier side of the base 52 is below a second side of the base. A grasping member 83 is rotatably attached to the handle member such that the

grasping member may rotate about a second axis of rotation which is parallel or angled relative to the base 52 of the handle member 48.

6. Claims 7-9 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by *Hundley* (US Pat. 5,242,344). *Hundley* discloses an exercise device having a weight stack load 12, the exercise device comprising at least one arm assembly 90 operably attached to the load; a handle assembly 184 operably attached to the arm assembly; the handle assembly having a pivot ball 192 operably attaching the handle assembly to the arm assembly so that the handle assembly may rotate with respect to the arm assembly about a first axis of rotation and for pivoting in about at least two different orthogonal directions with respect to the first axis of rotation.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Johnson* (US Pat. 5,039,091). *Johnson* discloses an exercise device comprising an exercise machine handle assembly 180 operably attached to an arm assembly 160 of an exercise machine, the handle assembly comprising a base member 178 having a grasping member 180

attached thereto (Fig. 5); a connection joint 190 connecting the base member to the arm assembly and providing for rotation of the handle assembly with respect to the arm assembly about a first axis of rotation and providing for pivoting of the base member in at least one orthogonal direction with respect to the first axis of rotation. The first axis of rotation coincides with a longitudinal axis running through the internally threaded receptor 174. The threaded portion 178 of connector 192 (Fig. 15) is threaded within receptor 174 (Fig. 5), but not tightened, so that the connector 192 is rotatable relative to the arm assembly 160 (col. 7, lines 12-18). A first axle 193 (Fig. 15) is attached to the base member 178. A pivot ball 226 operably attaches the first axle to a second axle 192, the second axle being operably attached to the arm assembly. The first axle comprises a pair of flanges 228 for pivotal attachment of the first axle to the pivot ball and the second axle comprises a pair of flanges 224 for pivotal attachment of the second axle to the pivot ball. The second axle 192 is operably attached to the arm assembly 160 by a third axle 178 (Fig. 15) providing for rotation of the handle assembly 180 with respect to the arm assembly 160 about the first axis of rotation. A sleeve 170 having at least one bearing 172 therein is attached to the third axle 178 and the arm assembly 160.

Conclusion

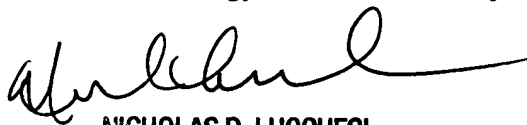
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fox (US Pat. 1,371,750) Discloses a universal joint having a pivot ball 1 shaped like a ball.

Berne (US Pat. 2,921,791), *Amann* (US Pat. 4,629,185), *Jennings* (US Pat. 4,842,272), *McGillis et al.* (US Pat. 4,872,668), *Olschansky et al.* (US Pat. 5,145,479), *Vittone* (US Pat. 5,273,509), *Webber* (US Pat. 6,004,247), *Voris* (US Pat. 6,394,937 B1), *Webber et al.* (US Pat. 6,579,213 B1), *Nebula Fitness Equipment* (brochure, 4005-Lever Row Swivel Adjustments), *TuffStuff* (PowerLine brochure), and *TuffStuff* (brochure, TUB-49 Upper Body Machine) disclose various exercise machines including handle assemblies that satisfy at least one of the pending claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Victor K. Hwang
August 6, 2003